

S.B.CIVIL WRIT PETITION NO.518/1994

SAMPAT LAL AVASTI VS. STATE OF RAJ & ORS.

DATE OF ORDER : 16/10/2006

HON'BLE SHRI RAJESH BALIA, J.

Mr.Salil Trivedi, for the petitioner.

Mr.B.L.Bhati for respondent No.1 & 2.

Mr.Dipesh Beniwal for respondent no.3.

None has appeared for respondent no.4 in spite of service.

Heard learned counsel for the parties.

The petitioner has challenged the assignment of seniority to respondent nos. 3 and 4 on their absorption in the office of Divisional Commissioner, Jodhpur as their parent office of Desert Development Commissioner become defunct by order dated 23/2/1993.

So far as the petitioner is concerned, he was appointed as L.D.C. at Collectorate, Jalore on 17/9/1979. By order dated 31/7/1981 he was transferred to the office of Commissioner, Desert Development Department as L.D.C. and was so confirmed on 27/2/1982. On 8/4/1987, he was transferred to the office of Divisional Commissioner, Jodhpur at his own request. On 25/6/1992 options were invited for fixation of seniority in the office of Divisional Commissioner, Jodhpur and on 11/11/1992 a tentative seniority list was published in which the name of petitioner was shown at serial no.1, whereas, name of respondent nos. 3

and 4 namely; Shri Mohan Lal Prajapat and Shri Fateh Krishna Vyas did not find place. Said seniority list was finalised and final seniority list was published on 15/5/1993 wherein petitioner's position remained intact and names of respondent nos. 3 and 4 did not find place in final seniority list also. However, on 9/11/1993 after the surplus employees from the office of Commissioner, Desert Development Department were absorbed in the office of Divisional Commissioner, a fresh tentative seniority list was published in which the petitioner was shown at serial no.3 and respondent nos. 3 and 4 were shown above him at serial no.1 and 2 respectively. After inviting objections, on 28/3/1994 the final seniority list was published in which the position of the respondents no.3 and 4 and the petitioner remained the same. This has led to filing of this writ petition. The writ petition was filed when tentative seniority list was published, however, during the pendency of writ petition when final seniority list was published, the writ petition was amended.

From the perusal of the seniority list and the facts which have not been disputed, it appears that Shri Mohanlal Prajapat was initially appointed as L.D.C. On 31/7/1978 and was confirmed on 27/2/1982. The petitioner was appointed on 17/9/1979 and was also confirmed on 27/2/1982. Shri Fateh Krishna Vyas was initially appointed after the petitioner on 15/11/1981 and was confirmed after the petitioner. As per the date of appointment and confirmation

irrespective of intervening transfers and absorption, Shri Mohanlal Prajapat remains senior to the petitioner by dint of his earlier appointment and simultaneous confirmation on the post of LDC in the Desert Development Department. Therefore, so far as Shri Mohanlal Prajapat being ranked senior to petitioner, the same cannot be considered to be erroneous.

So far as respondent no.4 Fateh Krishna Vyas is concerned, on the basis of his continuous officiation on the post he is definitely junior to the petitioner. The only reason assigned for placing him above the petitioner is that petitioner was transferred to the office of Divisional Commissioner at his own request on 8/4/1987, and therefore, his seniority is to be counted w.e.f. the date he joined in the office of Divisional Commissioner.

This stand appears to be contrary to the scheme of Rules and also against the fair deal of equality of opportunity to all the incumbents. Proviso (ix-a) to Rule 27 of the Rajasthan Subordinate Offices Ministerial Staff Rules, 1957 (for short the Rules of 1957) reads as under:-

“(xi-a) that notwithstanding anything contained to the contrary in substantive part of rule 27, in case of a person holding a post mentioned in sub-rule (2) of rule 6 of these rules in a Department and has been

transferred from one Department to another on the corresponding post in the cadre concerned at his own request in accordance with proviso (I) to sub-rule (1) of rule 7, the inter-se seniority of such person vis-a-vis persons of the Department in which such person has been taken on transfer at his own request shall be determined from the date he joins the new Department on the post concerned.”

Apparently, this proviso clearly reveals that only at the time when person is transferred to any department at his own request, for the purpose of assigning seniority amongst the persons holding like posts in transferee department he will be considered to be junior most amongst the persons already in the department. However, subsequent thereto when any person is appointed or joins on absorption, he is not to be governed by proviso (xi-a) of the Rule 27 inasmuch inter-se seniority of such incumbent has to be determined with those persons who join the department by absorption as on the date of absorption vis-a-vis persons already working in the department to which an incumbent is absorbed vide Rule 15 of the Rajasthan Civil Services (Absorption of Surplus Personnel) Rules, 1969 (for short the Rules, 1969), which reads as under:-

“15.Seniority-(1) The seniority of a surplus employee appointed substantively to a

permanent post in the service or cadre in which he is absorbed shall be determined by the appointing authority concerned by placing him below the junior-most permanent employee of the new service or department who has a longer period of continuous substantive service on the post compared to the continuous substantive service of the surplus employee on equivalent or higher post. The seniority of a surplus employee who is absorbed on a higher post on officiating basis shall be determined only in respect of his permanent post;

Provided that the seniority of the surplus employee whose length of continuous service in substantive or officiating capacity or in both such capacities is lesser than the length of continuous service in substantive or officiating capacity or in both such capacities of the junior most permanent employee of the service or cadre of the New department in which such surplus employee has been absorbed, shall be determined by placing the surplus employee immediately below the said junior most permanent employee in the service or cadre or the department in which the surplus employee has been absorbed.

Provided further that inter-se seniority of the surplus employee absorbed in a department/service/cadre or unit under an Appointing Authority and the employees of the service/cadre of the new department, for promotion

to higher post in the service or cadre in which he has been absorbed shall be determined according to the date of continued officiation in a class or category of post concerned or an equivalent or higher post provided such officiation was not of the fortuitous nature or ad hoc or an urgent temporary appointment, notwithstanding their year of substantive appointment or date of confirmation or the length of continuous substantive service in the different cadre post or service.”

A plain reading of the aforesaid Rule makes it clear that inter-se seniority of the absorbed employee vis-a-vis person working in the department on such date where he has been absorbed has to be determined on the basis of longevity of the continuous service amongst the category to which he belongs. Merely because for the purpose of determining inter-se seniority at the time a person joins a new Department at his own request by placing him amongst the junior most employee does not affect the past service vis-a-vis other incumbents who may be joining the Department later on. By joining a new department at his own request, the date of his appointment and continuous officiation as a permanent employee does not alter and it remains same.

Therefore, in my opinion, the assignment of seniority to

Fateh Krishan Vyas, who joined the office of Divisional Commissioner much after the petitioner, whose seniority vis-a-vis persons already working in the Department as on the date of his transfer stood determined above the petitioner was not justified and cannot be sustained. The rule relating to determination of seniority in a new department, where as person on transfer, at his own request, operates only once and not again and again. There is no warrant that the person like petitioner loses his position vis-a-vis person of other departments who may come to such department either by transfer or absorption from different departments. Such multiple jeopardy is not envisaged under the rules, nor by interpretorial exercise such unjust results can be arrived at.

This is without prejudiced to other aspects of the matter that whenever a person makes a request for transfer he does not acquire any right to get transfer at a place of his own choice but the transfer is also effected if the same is considered to be in administrative exigency. There is no gainsay to state that when transfer is made in administrative interest by the department, the transferred employee carries his seniority with him unaffected. Since on interpretation of rules, I have come to the conclusion that petitioner must be ranked above respondent no.4 - Fateh Krishan Vyas but lower than respondent no.3 - Mohan lal Prajapat, the petition must be partly allowed.

Accordingly, the petition is partly allowed. The respondents are directed to assign seniority to the petitioner above respondent no.4 - Fateh Krishan Vyas and below Mohan Lal Prajapat - respondent no.3. No order as to costs.

(RAJESH BALIA), J.

Pankaj Baweja.